

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
June 24, 1998

In the Matter of
Arthur S. Meisnere

Complainant,

vs.

Whitley Park Condominium
Association, Inc.
Unit Owners Association

Respondent.

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Case No. 376-0

Montgomery County
Consumer
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Decision and Order

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing, on June 24, 1998, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed hearing Panel having considered the testimony and evidence of record, finds, determines and orders as follows:

On November 30, 1997, Arthur S. Meisnere (hereinafter the "Complainant" or "Meisnere") filed a formal dispute with the Office of Common Ownership Communities against the Whitley Park Condominium Association, Inc. Unit Owners Association (hereinafter the "Respondent" or "Association").

The Complaint asked the Commission to:

"1. Find the new parking rules unreasonable and unenforceable." and

"2. Meeting was held without one of the directors, but the absent directors voted by proxy."

At the hearing, the Complainant stated that he was satisfied that the procedural issues surrounding the adoption of the parking rules were no longer at issue due to certain subsequent actions taken by the Respondent. As a result, the Panel was left to determine whether the new parking rules were reasonable and enforceable.

The Complainant asked the Panel to leave the record open in order to allow him to present testimony from an owner concerning the lack of parking problems before the rule at issue was adopted in order to support Complainant's assertion that there was no need for the new rules. The request was denied by the Panel due

to the fact that the Complainant had ample opportunity to ensure the witnesses' appearance by subpoena and due to the prejudice to the Respondent in further delay.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities and the Commission voted that it was a matter within the Commission's jurisdiction and the hearing date was scheduled.

Findings of Fact

Based on the testimony and evidence of record, the Panel makes the following findings:

1. Arthur S. Meisnere is the owner of a townhouse condominium unit within the Whitley Park Condominium located at 5441 Whitley Park Terrace, Bethesda, Maryland 20814. ("Unit").
2. The Respondent, through its Board of Directors, adopted a set of rules on November 13, 1997 which, inter alia, include a restriction which limits the use of certain parking spaces to "guests only" between 12:00 p.m. and 8:00 p.m. ("Parking Rules").
3. The parking spaces at issue are Limited Common Elements which were, based upon unrefuted representations by the Respondent, assigned to the Respondent along with a condominium unit by the developer of Whitley Park Condominium as part of a settlement of a lawsuit between the Respondent and the developer.
4. Article XV, Section 2 of the Association Bylaws expressly empowers the Board of Directors with the power to adopt rules governing parking and traffic control provided such rules are consistent with law and the Bylaws.
5. Complainant claimed that the developer or developer's agents had promised Complainant use of the parking spaces at issue but did not offer any further evidence confirming such representations.
6. Both the Complainant and the Respondent agree that generally, with the exception of certain holidays, there will always be open spaces available for resident and guest parking even after implementation of the Parking Rules. The Parking Rules were designed by the Board to accommodate resident needs for multiple guest spaces between 12:00 p.m. and 8:00 p.m. for parties and other social gatherings.

Conclusions of Law

As stated in Dulaney Towers Maintenance Corporation et. al. v. O'Brey et. ux. 418 A.2d 1233 (Md. 1980), house rules adopted

by a condominium Board of Directors that are reasonable, consistent with the law and enacted in accordance with the Bylaws, will be enforced.

The Association has the express authority in Article XV of the Association Bylaw to adopt parking rules provided such rules are consistent with law and the Association Bylaws. Complainant could provide no evidence that would establish his unfettered right to use the spaces at issue or which would restrict the Association's right to reasonably restrict the use of such spaces.

The evidence supported the Association's claim that the restriction of these spaces did not preclude the ability of any owner to park in any of the other open spaces except, if at all, on a few days per year. Further, the Parking Rules were not shown to be inconsistent with any provision of the Association Declaration, Bylaws or with general law. Therefore, the Panel concludes that the Parking Rules limiting use of certain limited common element spaces for "guests" between the hours of 12:00 p.m. and 8:00 p.m. are reasonable.

Order

In view of the foregoing, and based on the evidence of record, it is, on this 9th day of August, 1998, hereby Ordered by the Commission Panel that:

1. The Association has the right to adopt reasonable parking rules and the Parking Rules at issue are reasonable; and it is further Ordered that

2. The Association has the immediate right to enforce the Parking Rules adopted by the Board of Directors on November 13, 1997 and which have been stayed since the institution of this Complaint.

The foregoing was concurred in by panel members Philbin, Price and Wilson.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court Of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



Peter S. Philbin, Panel Chair
Commission on Common
Ownership Communities